

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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NAMI C. STEVENS,	)	
	)	DOCKET NO.: PT-1996-26
Appellant,	)	
	)	
-vs-	)	
	)	
THE DEPARTMENT OF REVENUE	)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,	)	CONCLUSIONS OF LAW,
	)	ORDER and OPPORTUNITY
Respondent.	)	<u>FOR JUDICIAL REVIEW</u>

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The above-entitled appeal was heard on the 12th day of August, 1997 in Kalispell, Montana in accordance with the order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law.

The taxpayer, Nami C. Stevens, was represented by Ron Trippet, the taxpayer's husband. Mr. Trippet presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Randy Pearson, Staff Forester, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received, and the record remained open for a post-hearing submission from the taxpayer and a response from the DOR. The Board then took the appeal under advisement.

The Board, having fully considered the testimony,

exhibits, and all things and matters presented to it by all parties, finds and concludes as follows:

#### **STATEMENT OF THE ISSUE**

Does the subject property meet the definition and qualify as Class 3, agricultural property?

#### **FINDINGS OF FACT**

1. Due, proper, and sufficient notice was given of this matter and of the time and place of the hearing. All parties were afforded the opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as:

Tract 2B in S2SW4SE4 of Section 24, Township 29, Range 22 West, & Tract 3AD in NW4NE4 of Section 25, Township 29, Range 22 West, Flathead County, State of Montana. Land only consisting of 12.11 acres. Assessor #0982533.

3. The DOR appraised the subject property for the 1996 tax year at a value of \$35,220.

4. The testimony and exhibits presented in Docket #PT-1996-25 have been incorporated with this appeal.

5. The taxpayer's husband, Ron Trippet, filed an

Application For Agricultural Classification of Lands, AB-3A form, in 1995. This application was approved Class 3 (agricultural) by the DOR on July 17, 1995, stating:

you must apply for ag. status yearly on all parcels less than 20.00 acres.

6. The taxpayer's husband, Ron Trippet filed an Application For Agricultural Classification of Lands, AB-3A form, on June 4, 1996. The DOR denied the application, stating:

See attached property review form.

7. The taxpayer filed an AB-26 Property Review Form, dated June 4, 1996, stating:

See attached Ag. Application - use also last year irrigation information for water usage.

8. The DOR denied the taxpayer's request of Class 3, agricultural classification on the AB-26 Property Review Form, dated September 19, 1996, stating:

The ownership of assessor #0242200 is Ron E. Trippet & carries a "Bundle of Rights" with that ownership. The ownership of assessor #0982533 is Nami C. Stevens and carries a "Bundle of Rights" with that ownership. This is (sic) two separate ownerships & two separate "Bundle of Rights". Each ownership must show \$1500 gross income. The schedule F you furnished our office with, is not on file with the IRS & therefore not valid. Our office must see documented proof of income, such as receipts from the sales, & who the products were sold to, & when

the products were sold to them. It is within your rights to appeal this decision to the county tax appeal board within thirty days of this notice.

9. On October 29th, 1996, the taxpayer appealed to the Flathead County Tax Appeal Board requesting a value of \$1,126 for the land, stating:

this property is Agr. Land, tillable irrigated and is owned with my husband parcel since 1982 t be over 22+ acres. Have on file AB-3A for past 2 years when law was changed.

10. The county tax appeal board's decision dated June 23rd, 1997, denied the taxpayer's appeal, stating:

It is the decision of the Board that this appeal be denied as not meeting income necessary for agricultural classification. the Department of Revenue is ordered to make no change in value.

11. The taxpayer appealed the county board's decision on July 25th, 1997, stating:

The parcels did meet the arg. (sic) class & should be allowed arg. (sic) classification.

12. The record remained open allowing the taxpayer additional time to respond to a request of the Board regarding the production capabilities of the subject parcel. The taxpayer response was to be returned to the Board on or before August 29th, 1997. The DOR's opportunity to respond to the taxpayer's post hearing submission was to be received on or

before September 10th, 1997.

13. The taxpayers post hearing submission was dated September 8th, 1997 and received on September 10th, 1997. The DOR's response was dated September 11th and received September 12th, 1997.

#### **TAXPAYER'S CONTENTIONS**

The taxpayer stated that the subject property in prior years was classified as agricultural property.

The taxpayer provided the DOR with gross income amount of \$1,895. This is income generated from the subject parcel in addition to the adjacent parcel. Mr. Trippet contends that this total income qualifies the subject parcel along with the adjacent parcel for agricultural classification

The subject property originally consisted of approximately 22 acres. A zone change for the subject property was done when a golf course was constructed adjacent; and, subsequently, the taxpayer split the parcel into two parcels: one parcel in the name of the taxpayer and the other parcel in the name of taxpayer's spouse, Ron Trippet.

Mr. Trippet stated that the subject property is planted with an alfalfa/grass mixture. The subject property consists of approximately 11.5 acres of irrigated crop land and

less than 1 acre of grazing land. The property in past years has produced 2 1/4 to 2 1/2 tons per acre on the 11.5 acres. Hay in the area sells for \$65 to \$120 per ton, depending on the quality and type of grass planted. The subject property will typically yield two cuttings and, in some years, three.

#### **DEPARTMENT OF REVENUE'S CONTENTIONS**

The DOR granted the taxpayer agricultural classification for the subject property in 1995 based on income information provided by the taxpayer. The DOR required that the taxpayer file again for agricultural classification in 1996 and, in addition, provide proof of \$1,500 earned income from the subject property.

DOR's exhibit B, are portions of Title 15, relating to the classification of agricultural property.

The subject property is less than 20 acres in size and to qualify as Class 3, agricultural property, certain criteria must be met.

The taxpayer has combined income earned from this parcel along with income earned from an adjacent parcel owned by Ron Trippet, the taxpayer's spouse. Because these parcels are in separate ownerships and have separate identification numbers, the income or production cannot be combined.

DOR's exhibit D is a two page document, supplied to the DOR by the taxpayer and, in summary, illustrates the following:

#### General Journal

Person	Address	Description	Amount
Mark	Kalispell	hay	175
Steve	Marion	hay/ plant	100
Mike and Nancy	Kila	hay	120
R.N.T., LTD	Kalispell	flowers	1500

this is a list of people or companys (sic) that have bought products from me. This information is provided to the Flathead County Appraisal office to answer queson (sic) #1 of form AB-3A (rev 9/93).

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#### Internal Revenue Service

Schedule F	Profit or Loss From Farming
Gross Income	1895.00
Total Expenses	1895.00
Net farm profit or (loss)	None

Mr. Pearson stated that this IRS Schedule F was not submitted with the 1995 income tax returns. This form was submitted to the DOR to show income earned and qualify the subject property as Class 3 agricultural lands. Mr. Pearson stated that the flowers are grown on the adjacent parcel. Mr. Pearson also stated that the full names of the individuals who

purchased the hay were excluded from this exhibit. Mr. Pearson stated that the income from hay sales listed on exhibit D is from the subject property but the income generated totals only \$395; therefore, this property does not meet the income test required by statute.

Question #6 on the AB-3A Form filed by the taxpayer states:

Are the crops produced on the above described lands primarily consumed by livestock, poultry, or by other animals in the agricultural operation?

The taxpayer answered "no" to this question which would indicate that this property does not qualify for agricultural classification. The primary basis for qualifying for agricultural classification for tracts of land under 20 acres is meeting or exceeding the \$1,500 income test.

#### **DISCUSSION**

The issue before this Board is whether or not the subject property qualifies as Class 3, agricultural property.

For a property less than 20 acres to qualify as Class 3, agricultural property, certain criteria must be met, §15-7-202. MCA, states in part:

(2)Contiguous or noncontiguous parcels of land totaling less than 20 acres under one ownership that are actively devoted to agricultural use are



eligible for valuation, assessment, and taxation as agricultural each year that the parcels meet any of the following qualifications:

- (a) the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than \$1,500 in annual gross income from the raising of agricultural products as defined in 15-1-101; or
- (b) the parcels would have met the qualifications set out in subsection (2)(a) were it not for independent, intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in case proof of qualification in a prior year will suffice.

The taxpayer owns the subject parcel which consists of 12.11 acres. The taxpayer's husband owns the adjacent, contiguous parcel of 11.59 acres. In prior years the ownership consisted of one parcel. The taxpayer along with her husband made a decision to split the property and create separate ownerships. Mr Trippet stated that they were informed of the advantages of assessing the parcels as one, and by exceeding 20 acres, allows for different treatment for Class 3, agricultural property in accordance with §15-7-202 MCA.

The subject property fails to meet the \$1,500 income test or the production of 30 tons of hay for the year in question as defined in 42.20.147 ARM CRITERIA FOR AGRICULTURAL LAND VALUATION FOR LAND TOTALING LESS TAN 20 ACRES.

The post hearing submissions of the taxpayer and the DOR were not filed by the dates prescribed at the hearing.

Even if the information provided was considered, the subject property would not meet the criteria to qualify as Class 3, agricultural property, for the year in question.

Based on the evidence and testimony presented, it is the Board's opinion that the subject property does not qualify as Class 3, agricultural property as defined in §15-7-202 MCA. The appeal of the taxpayer is hereby denied.

#### **CONCLUSIONS OF LAW**

1. The State Tax Appeal Board has jurisdiction over this matter. §15-2-301 MCA

2. §15-7-201 MCA Legislative intent - value of agricultural property.

3. §15-7-201 MCA Eligibility of land for valuation as agricultural.

4. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and the taxpayer must overcome this presumption. The Department of Revenue, however, should bear a certain burden of providing documented evidence to support its assessed value. Western Airlines, Inc. v. Catherine J. Michunovich, et al, 149 Mont.\_347.428 P.2d 3.(1967).

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**ORDER**

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Flathead County by the assessor of that county at the 1996 tax year as Class 4, tract land as determined by the DOR. The decision of the Flathead County Tax Appeal Board is therefore affirmed.

Dated this 26th day of September, 1997.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

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PATRICK E. MCKELVEY, Chairman

( S E A L )

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GREGORY A. THORNQUIST, Member

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LINDA L. VAUGHEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

I certify that on this 26th day of September, 1997, a true and correct copy of the foregoing Order was served by placing same in the United States Mail, postage prepaid, and addressed as follows:

Nami C. Stevens  
c/o Ron Trippet  
P.O. Box 32  
Kalispell, Montana 59903

Office of Legal Affairs  
Department of Revenue  
Mitchell Building  
Helena, Montana 59620

Department of Revenue  
Property Assessment Division  
c/o Randy Pierson  
Sam W. Mitchell Building  
Helena, Montana 59620

Flathead County Appraisal Office  
P.O. Box 920  
Kalispell, Montana 59903-0920

Flathead County Tax Appeal Board  
723 5th Avenue East  
Suite 224  
Kalispell, Montana 59901-5364

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DONNA WESTERBUR  
Administrative Assistant